## APPENDIX A

In The
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 24738

NEW ORLEANS STEAMSHIP ASSOCIATION,
Appellant,

versus

GENERAL LONGSHORE WORKERS, I.L.A. LOCAL UNION # 1418, ET AL,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA.

(January 26, 1968)

Before GEWIN, BELL and AINSWORTH, Circuit Judges.

BELL, Circuit Judge: Appellant New Orleans Steamship Association appeals from an order dismissing its complaint which in substance amounted to a request for a mandatory injunction to enforce an arbitration award. The award directed two local unions, the appellees, and their members to cease and desist work stoppages in violation of a collective bargaining agreement. The District Court was of the view that enforcement of such an order by a federal court was barred by the Norris-LaGuadria Act, 29 USCA § 104.[1] We reverse.

[1] 29 USCA, § 104:

"No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"(a) Ceasing or refusing to perform any work or to remain in any relation of employments;"

Appellant is an association representing various employers who employ longshoremen for the loading and unloading of cargo in the Port of New Orleans. These longshoremen are members of and are represented by appellee unions. Appellant and the unions are signatories to a collective bargaining agreement. The parts of the agreement which are involved in this dispute are a no strike clause, an arbitration clause, and a clause empowering the arbitrator to issue a desist order. They provide in pertinent part:

> "(a) *No Strikes—No Lockouts*
>
> "There shall be no strikes, work stoppages, nor shall there be any lockouts.
>
> "(b) *Disputes Procedure and Arbitration*
>
> "The parties accept the principle that any dispute involving the interpretation or application of the terms of this agreement shall be resolved in an orderly and expeditious manner. They commit themselves to the procedure outlined below. Failure by either party to staff and maintain the permanent disputes committee provided for herein and failure to deal with disputes under the disputes procedure shall constitute a violation of this agreement.
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> "(c) These steps shall be followed to insure prompt resolution of disputes:
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> "Step 1. When a problem arises it shall be discussed immediately between the appropriate representatives of the employer and local union involved; if they are unable to reach a satisfactory settlement, either side may request immediate referral of the matter to Step 2. As soon as such request is made known each party shall notify its representatives on the permanent disputes committee.
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> "Step. 2. There shall be established a permanent disputes committee consisting of two representatives of the Association and the presidents of Locals 1418 and 1419. Each member shall have a desig-

nated alternate who shall serve in the event a member is unavailable. If the matter is not disposed of in this Step 2 within forty-eight (48) hours of the origin of the dispute, or within such additional time mutually agreed upon, either party may take the dispute to final and binding arbitration."

* * *

"(d) Either party to a dispute may by-pass the procedure leading up to arbitration and obtain arbitration forthwith whenever a violation of sections (a) and/or (b) of this Article shall be alleged. In this event, a notice of such allegation shall be made by telegram to the other party and to the arbitrator. The arbitrator shall hold a prompt hearing within seventy-two (72) hours after receipt of the notice and shall render an award within twelve (12) hours after the hearing. In such case, the arbitrator shall make findings of fact concerning the alleged violation and shall prescribe appropriate relief, including an order to desist therefrom."

The arbitrator in this matter served by virtue of his inclusion on a panel of six permanent arbitrators selected by the parties to serve for the duration of the agreement. On October 5, 1965, appellant notified the arbitrator that appellees had engaged in work stoppages and requested a hearing within 72 hours as provided in the agreement, Article XVIII, § (d), *supra*. A four day hearing was held commencing on October 8, 1965. The award was entered on December 13, 1965. The arbitrator found that stoppages had occurred in violation of the contract and sustained appellant's grievance. He directed appellees, their officers, agents, representatives, and members to ". . . cease and desist from work stoppages in violation of their contract . . ."

Alleging that work stoppages had occurred subsequent to this award, appellant sought relief in the District Court in March, 1966, in the form of an order enforcing the

award of the arbitrator. The District Court dismissed the complaint, relying on the Norris-LaGuardia Act, *supra*, and the cases of *Sinclair Refining Co. v. Atkinson*, 1962, 370 U.S. 195, 82 S. Ct. 1328, 8 L. Ed. 2d 440; and *Gulf & South American Steamship Co., Inc. v. National Maritime Union of America, AFL-CIO*, 5 Cir., 1966, 360 F. 2d. 63.

The Court erred in its interpretation of our *Gulf & South American Steamship case.* Our holding there was that the arbitrator exceeded his jurisdiction in making the award and thus there could be no judicial enforcement of the award. We did not reach the question presented here. We held, as had the District Court, that *Sinclair Refining Company v. Atkinson, supra*, was direct authority on the question and controlling. Absent jurisdiction in the arbitrator, the case was nothing more than an effort to obtain a federal injunction to enjoin a work stoppage arising out of a labor dispute.

Our decision here turns on a construction of the *Sinclair* holding. That case did not involve an arbitration award. It involved an effort to obtain an injunction to enforce a no strike clause where strikes were ensuing but where there had been no arbitration. The Supreme Court has not considered the precise question with which we are now concerned. Nevertheless, the sweep of *Sinclair* is broad; the Norris-LaGuardia Act is treated as all encompassing despite § 301 of the Labor-Management Relations Act, 29 USCA, § 185, and the congressional and national policy enunciated in *Textile Workers v. Lincoln Mills*, 1957, 353 U.S. 448, 77 S. Ct. 912, 1 L. Ed. 2d 972, and the *Steelworkers Triology*,[2] fostering the arbitration process.

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[2] *United Steelworkers v. American Mfg. Co.*, 1960, 363 U.S. 564, 80 S. Ct. 1343, 4 L. Ed. 2d 1403; *United Steelworkers of America v. Warrior and Gulf Navigation Co.*, 1960, 363 U.S. 574, 80 S. Ct. 1347, 4 L. Ed. 2d 1409; *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 1960, 363 U.S. 593, 80 S. Ct. 1358, 4 L. Ed. 2d 1424.

The court stated in *Textile Workers v. Lincoln Mills, supra*, that the agreement of the employer to arbitrate disputes is the *quid pro quo* for the agreement not to strike. These cases and their progency now make it settled law that federal courts can compel parties to collective bargaining agreements to carry out their agreements to arbitrate. The court alluded to this in *Sinclair* but stated that such injunctive orders do not conflict with the matters (strikes, work stoppages, and picketing) over which federal courts were deprived of jurisdiction by the Norris-LaGuardia Act.

Meanwhile, it has become common-place for federal courts to enforce arbitration awards by mandatory injunction where matters other than strikes, work stoppages or picketing are involved. See e.g., *Minute Maid Co. v. Citrus, Cannery, Food Processing and Allied Workers, Drivers, Warehousemen and Helpers, Local Union # 444*, 5 Cir., 1964, 331 F. 2d 281; *Fontainebleau Hotel Corp. v. Hotel Employees' Union Local 255*, 5 Cir., 1964, 328 F. 2d 310.

In sum, the situation to date is that arbitration is encouraged; it may be compelled where the parties have contractually adopted such a procedure. And the award may be judicially enforced up to the point of those matters proscribed by Norris-LaGuardia.

The question presented now is the power of the District Court to enforce the award of an arbitrator in a setting where the arbitrator, in the exercise of undisputed contractual jurisdiction, has ordered an end to work stoppages. The union has refused to abide by his order and asserts that the court is without jurisdiction to remedy the breach. Practically, this is the ultimate or last step in the arbitration process. The agreement between the parties is valid and the authority of the arbitrator over the

subject matter and to enter a desist order is not disputed. We can assume, *arguendo*, that the employer agreed to arbitrate grievances in return for the no work stoppage clause. Does *Sinclair* foreclose relief to the employer? We hold that it does not.

The question was before the court in *International Longshoremen's Assn. v. Philadelphia Marine Trade Association*, 1967, 19 L. Ed. 2d 236, ..... U.S. ....., 88 S. Ct. ....., but was not reached due to the impreciseness of the injunctive order involved. Justice Douglas, concurring in part and dissenting in part in that case, forecast the problem which the *Sinclair* holding poses in the situation here present where we must accommodate, if possible, two national policies: The proscripiton of Norris-LaGuardia in labor disputes and the use of arbitration to avoid labor disputes. He considered *Sinclair*, where there had been no arbitration, distinguishable from a case where the arbitration award, as here, is frustrated through a refusal to abide by the decision of the arbitrator.[3] Our approach is to distinguish *Sinclair* on this same basis and on the more than semantical ground that there is a real difference between an ordinary injunction and an order enforcing the award of an arbitrator although the end result is the same.

In this case the parties agreed to the remedy of a de-

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[3] At least one state court has considered the same issue. The New York Court of Appeals "confirmed" an award of an arbitrator enjoining a union from violating a no slow down clause of a collective bargaining agreement. This was found despite a New York statute modeled after the Norris-LaGuardia Act. The Court reasoned:

> ". . . Section 876-2, like its prototype the Federal Norris-LaGuardia Act, 29 USCA § 101 et seq., was the result of union resentment against the issuance of injunction in labor strifes. But arbitration is voluntary and there is no reason why unions and employers should deny such powers to the special tribunals they themselves create. Section 876-a and Article 84 (Arbitration) are both in our Civil Practice Act. Each represents a separate public policy and by affirming here we harmonize those two policies." *Ruppert v. Egelhofer*, 1958 3 N.Y. 2d 576, 170 N.Y.S. 2d 785, 148 N. E. 2d 129, 70 ALR 2d 1048.

sist order by the arbitrator. Such an order was entered and breached. The court in enforcing such order or award, although injunctive in nature, would be doing no more than enforcing the agreement of the parties. This not unusual action on the part of a court will lie unless the court has been deprived of jurisdiction by the Norris-LaGuardia Act.

Norris-LaGuardia is limited to labor disputes and we consider the instant controversy to be outside the scope of a labor dispute as such. We have before us a contract wherein the parties have ceded their remedy of self-help in a labor dispute to arbitration even to the point of permitting the arbitrator to grant a desist order. Once the arbitration was completed, the matter became ripe for specific performance and fell outside the scope of Norris-LaGuardia.

We think the logic of the arbitration policy compels this result; otherwise one of the parties to a collective bargaining agreement containing arbitration and no strike or work stoppage clauses has a hollow right indeed. He is told: Our national policy is to encourage arbitration; you may contract to arbitrate and obtain a no strike clause as the *quid pro quo* for your agreement to arbitrate; a recalcitrant party will be compelled to arbitrate any dispute arising therefrom; and the arbitrator may be empowered contractually to issue a desist order. We do not believe in light of the body of law which has grown from § 301 that the law will now say to this party that, having done these things, there is no remedy in the event the opposite party decides to ignore the award of the arbitrator to desist the stoppage. No such result should be imputed to Congress; the Supreme Court did not go so far in *Sinclair*.

Our judgment is that the Norris-LaGuardia Act and arbitration under the auspices of § 301 of the Labor-Man-

agement Relations Act, construed in *pari materia*, can be meaningfully accommodated. They relate to the same subject matter—labor relations—and they should be construed together. *Cf. United States v. Stewart*, 1940, 311 U.S. 60, 85 L. Ed. 40, 61 S. Ct. 102. Each has its place in the labor relations arena; the vitality of Norris-LaGuardia is in no wise diminished by the judicial enforcement of the award of an arbitrator made pursuant to a contract.

The District Court had jurisdiction under these circumstances to enforce the award of the arbitrator and erred in dismissing the complaint.

REVERSED AND REMANDED for further proceedings not inconsistent herewith.

## *APPENDIX B*

UNITED STATES COURT OF APPEALS
Fifth Circuit

Office of the Clerk

Edward W. Wadsworth
Clerk

Room 408—400 Royal St.
New Orleans, La. 70130

March 12, 1968

Re: No. 24738—New Orleans Steamship Association
vs. General Longshore Workers,
I.L.A. Local Union # 1418, Et Al

Gentlemen:

You are hereby advised that the Court has today entered an order denying the Petition ( ) for Rehearing in the above case. No opinion was rendered in connection therewith.

Very truly yours,

EDWARD W. WADSWORTH, CLERK,

By /s/ Frances Wolff,
Deputy Clerk.

cc: Messrs. Samuel Lang
Andrew C. Partee, Jr.
Attorneys at Law
New Orleans, La.

Mr. Victor H. Hess, Jr.
Attorney at Law
New Orleans, La.

Mr. Alvin J. Liska
Attorney at Law
New Orleans, La.

## *APPENDIX C*

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

No. 16398
CIVIL ACTION

NEW ORLEANS STEAMSHIP ASSOCIATION,
a Corporation

vs.

GENERAL LONGSHORE WORKERS, I.L.A. LOCAL UNION # 1418, an Unincorporated Association, and GENERAL LONGSHORE WORKERS, I.L.A. LOCAL UNION # 1419, an Unincorporated Association, AFL-CIO

CHRISTENBERRY, J.

This is a suit brought by the New Orleans Steamship Association (hereafter referred to as Association) against the General Longshore Workers, I.L.A. Local Unions Nos. 1418 and 1419 (hereafter referred to as Unions) based upon violation of and seeking performance of a contract between the parties arising under the Labor-Management Relations Act (29 U.S.C. § 185) and 28 U.S.C. § 1337. The Association alleges that it entered into a labor contract with the Unions which contains a no-strike clause and an arbitration clause. On October 5, 1965 one of the arbitrators received a telegram from the Association alleging a series of work stoppages and requesting that the arbitrator call a hearing. After the hearing the arbitrator entered an award ordering the Unions and their members to cease

and desist from work stoppages in violation of their contract with the Association.

The Association asserts that the Unions violated the order of the arbitrator and Article XVIII of the contract involved herein by engaging in other work stoppages on December 27, 1965, February 21, 1966, and on March 8, 1966.

Now before the Court are motions of the Association for a mandatory injunction to enforce the award of the arbitrator; and motion of the Unions to dismiss Association's motion for a mandatory injunction.

This Court had the identical problem before it in *Gulf & South American Steamship Co., Inc. vs. National Maritime Union of America, A.F.L.-C.I.O.*, affirmed 360 F. 2d 63 (5th Cir., 1966) when it dismissed the plaintiff's complaint against the union on the ground that the Court was without jurisdiction to grant injunctive relief citing *Sinclair Refining Co. v. Atkinson*, 1962, 370 U.S. 195, 82 S. Ct. 1328, 8 L. Ed. 2d 440.

The Fifth Circuit in affirming this Court's decision stated:

> "The District Court dismissed the complaint on the ground that it was without jurisdiction to grant the injunctive relief sought in view of § 4 of the Norris-LaGuardia Act. 29 U.S.C.A. § 104. The court rejected the contention of the employer that § 301 of the Taft-Hartley Act, 29 U.S.C.A. § 185, was a pro tanto repealer of § 4 of the Norris-LaGuardia Act, and that the court thus had jurisdiction.
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> The court relied on *Sinclair Refining Co. v. Atkinson*, 1962 370 U.S. 195, 82 S. Ct. 1328, 8 L. Ed. 2d 440 as authority for this holding. That decision of the Supreme Court is direct authority on the ques-

tion and is controlling. There the employer sought the injunction directly while here the injunction is sought under the guise of enforcing the award of an arbitrator but this is a distinction without a difference under the facts of this case, and any other result would be exalting form over substance."

The motion of the defendant, General Longshore Workers, I.L.A. Local Union No. 1418 and No. 1419 to dismiss plaintiff's motion for a mandatory injunction is **GRANTED.** The motion of the plaintiff, New Orleans Steamship Association, for a mandatory injunction is **DENIED.**

New Orleans, Louisiana, this 28th day of February, 1967.

/s/ Herbert W. Christenberry
UNITED STATES DISTRICT JUDGE